He cites cases from England and *eighteen* of our states, including Michigan, in support. Again: "Conceding that the new tenancy, created by a permissive holding over, is in the particular case periodic, it can, by the weight of authority, be determined only by notice, as in the case of a similar periodic tenancy otherwise created." *Id.*, p. 1487. Here cases from *eight* states are cited. Tiffany observes that *Gladwell* v. *Holcomb, supra,* is *contra. Id.*, p. 1488. An examination of the cases cited by Tiffany discloses that in all of those jurisdictions he has really found authority for his conclusions.

Concerning the origin of tenancies from year to year, Lord Kenyon, C. J., said in *Doe* v. *Porter,* 3 D. & E. *13: "The tenancy from year to year succeeded to the old tenancy at will, which was attended with many inconveniences. And in order to obviate them the courts very early raised an implied contract for a year, and added that the tenant could not be removed at the end of the year without receiving six months' previous notice." An old but very high authority deciding the question raised in the principal case is *Right* v. *Darby* (1786), 1 Term Rep. 159, in which Lord Mansfield, C. J., said: "If there be a lease for a year, and by consent of both parties the tenant continue in possession afterwards, the law implies a tacit renovation of the contract. They are supposed to have renewed the old agreement, which was to hold for a year. But then it is necessary for the sake of convenience, that, if either party should be inclined to change his mind, he should give the other half a year's notice before the expiration of the next *or any following year.*" In the same case Buller, J., observes that the same rule applies to houses as applies to lands, and with reference to notice to quit says: "This doctrine was laid down as early as the reign of Henry the Eighth."

In the principal case the court might have advanced *good reasons* for abrogating the well-settled rule requiring "notice to quit" in the case of tenancies from year to year created by holding over; but if the question is really "one of authorities," as the court stated, it is certainly difficult to justify its decision. G. S.

OPERATION AND EFFECT OF RECORDING.—While the operation of the recording acts is not uncommonly said to result in a preference of the earlier recorded instrument on the ground that under the circumstances the later grantee takes "with notice," the true view in the normal case would seem to be that the earlier grantee is preferred because priority in time gives priority in right—and by recording, he has done all that is required to *preserve* that favored position.[1] Recording does not ordinarily *give* preference, it merely *safeguards* priority. Reference is here made to the normal case because it is, of course, true that there are certain special cases, not necessary to notice here, in which, independently of the recording acts, priority in time does not necessarily give priority in right. And there are other cases, one type of which will be discussed herein, in which it is important to observe that recording does give *notice.*

If A conveys land to B, who records, and later A executes a deed of the same land to X, B's rights are superior to X, not because X took with

notice, but because B, without any reference to recording or the statutes, had priority of time and therefore of right and has not been guilty of any omissions which might have lost him such favored position. So if A conveys lot one to B together with an easement over A's remaining lot two, and B records, a subsequent purchaser of lot two from A takes subject to the easement, and the reason is the same as in the case above. So, also, if A in his deed of lot one to B creates in his favor an equity—for example, a building restriction—in his remaining lot two, and A later confers upon X an equitable interest—for example, by contract of sale—in lot two, B is preferred as against X for the reason given above. There are situations in which as between competing equities priority of time does not confer priority of right (see ASHBURNER, PRINCIPLES OF EQUITY, pp. 78, *et seq.;* 2 TIFFANY ON REAL PROPERTY [Ed. 2], §566c), but the case supposed is not one of these.

But if in the last case A for value conveys to X a legal estate, the question becomes of vital importance as to whether X had "notice" of B's equitable interest in lot two. Assuming lack of actual notice or knowledge in X, the case turns on whether he was charged with notice by the fact that B's deed was on record. That he is not charged with notice was held in *Judd* v. *Robinson,* 41 Colo. 222, 14 Ann. Cas. 1018, and in *Glorieux* v. *Lighthipe,* 88 N. J. L. 199, Ann. Cas. 1917 E, 484. In these cases the ground for the decision is that the deed to B is not in X's "chain of title"; the New Jersey court further considering that "subsequent purchasers" as used in the statute as to whom recording gives notice includes only subsequent purchasers from the same grantor *of the same land.* On the contrary, it has been held that under the circumstances stated X is charged with notice. *Lowes* v. *Carter,* 124 Md. 678; *King* v. *Union Trust Co.,* 226 Mo. 351; *Whistler* v. *Cole,* 143 N. Y. Supp. 478. In the recent case of *McQuade* v. *Wilcox,* 215 Mich. 302 (1921), the latter view was unnecessarily adopted. The powerful support of Professor Tiffany is thrown with the latter group of cases. 2 TIFFANY ON REAL PROPERTY [Ed. 2], 2188.

The apparent conflict in the cases is due to a difference of opinion as to what is included in one's "chain of title." When it is said that one is charged with notice of provisions in instruments properly recorded it must be understood that such notice applies only to instruments in the "chain of title." *Simonson* v. *Wenzel,* 27 N. D. 638; *Losey* v. *Simpson,* 11 N. J. Eq. 246; *Rankin* v. *Miller,* 43 Iowa 11.

The determination as to what is included in one's chain of title, whether for the purpose of deciding the question of notice or the invalidity of a transfer as against a subsequent grantee, mortgagee, etc., must, after all, turn on the theory of the recording system and the reasonableness of the burden thrown upon the searcher of the records. Unquestionably the basic idea of the system is the creation of a public record of instruments of title from which a prospective purchaser of a tract of land may with reasonable certainty assure himself as to the safety of dealing with a given person. How far the system falls short of effecting this ideal is another story. In the cases proposed at the beginning of this note, X, under the usual grantor-grantee index system, presumably would find on the records a deed of lot

two to A; it would then be incumbent upon him to look through the index of grantors for deeds executed by A. His attention would be directed to the deed from A to B, which on a casual inspection would appear to affect only lot one, in which X is not interested. Should he be expected to examine that deed or its record so thoroughly that *in the light of the circumstances* (some of which may very well not appear except outside the instruments and records) he should realize that there was an equitable restriction on A's remaining lot two? Right here is where the two lines of authority diverge. Against the view approved by the principal case it may be urged that a tremendous burden is placed on the searcher of titles, whether he be prospective purchaser, attorney, or abstracter. On the other hand, it may very truly be said that the efficacy of efforts to restrict a given area will be very much increased by following such doctrine.

It was said above that the Michigan court unnecessarily gave its approval to the doctrine announced. It was unnecessary because the defendant in the case—the one who occupied the position of X in the case supposed—had only the equitable interest of a contract vendee. As between B and X, both having mere equities, B's priority of time gives him the favored position which he preserved in the principal case by taking all the steps required by the law to *preserve* such priority, namely, recording. The case should not have been decided on the matter of *notice*. R. W. A.